

## CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Sheila Donovan	Team: Team # 7	CCRB Case #: 200611338	<input type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Wednesday, 08/16/2006 9:30 PM	Location of Incident: East 54rd Street and Flatlands Avenue and East 53rd Street and Avenue J	Precinct: 63	18 Mo. SOL 2/16/2008	EO SOL 2/16/2008	
Date/Time CV Reported Sat, 08/19/2006 2:40 PM	CV Reported At: IAB	How CV Reported: Phone	Date/Time Received at CCRB Fri, 08/25/2006 10:48 AM		

Complainant/Victim	Type	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. SGT Brian Nyhus	00974	922882	NARCBBS

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. DT3 James Williams	91967	919867	NARCBBS
2. POM Gaspar Sciacca	24641	931192	NARCBBS
3. DT3 Daniel Ticali	05570	929255	NARCBBS
4. POM Vernon Kendrick	20024	904255	NARCBBS
5. POM Kevin Pecorella	17037	921665	NARCBBS

Officer(s)	Allegation	Investigator Recommendation
A.SGT Brian Nyhus	Abuse: On August 16, 2006, Sgt. Brian Nyhus authorized the strip-search of § 87(2)(b)	
B.SGT Brian Nyhus	Abuse: On August 17, 2006, Sgt. Brian Nyhus stopped § 87(2)(b) and § 87(2)(b) in the vicinity of East 53rd Street and Avenue J.	
C.SGT Brian Nyhus	Abuse: On August 17, 2006 Sgt. Brian Nyhus supervised the frisks of § 87(2)(b) and § 87(2)(b) in the vicinity of East 53rd Street and Avenue J.	
D.SGT Brian Nyhus	Abuse: On August 17, 2006, Sgt. Brian Nyhus supervised the searches of § 87(2)(b) and § 87(2)(b) in the vicinity of East 53rd Street and Avenue J.	
§ 87(4-b) § 87(2)(g)		

## Synopsis

§ 87(2)(b) filed this complaint with the IAB on August 23, 2006. He claimed that on August 16, 2006 in the vicinity of East 54<sup>th</sup> Street and Flatlands Avenue in Brooklyn, an officer identified through this investigation as PO Vernon Kendrick stopped him on the street, drew his asp and pushed him against the wall. § 87(2)(b) was arrested for allegedly selling marijuana, brought to the 63<sup>rd</sup> Precinct stationhouse and strip-searched under the supervision of Sgt. Brian Nyhus (Allegation A). § 87(2)(b) further claimed that on August 17, 2006 at 53<sup>rd</sup> Street and Avenue J, Sgt. Brian Nyhus stopped § 87(2)(b) and his friend § 87(2)(b) as they were walking home from buying food (Allegation B). He stated that Sgt. Nyhus and a second officer, identified as PO Gaspar Sciacca, frisked and searched him and § 87(2)(b) and then allowed them to leave (Allegation C and D). § 87(4-b) § 87(2)(g)

§ 87(2)(g)

§ 87(4-b) § 87(2)(g)

## Summary of Complaint

§ 87(2)(b) was interviewed at the CCRB on September 1, 2006 (encl. 5A-5E). On August 16, 2006, at approximately 9:30PM § 87(2)(b) left his home at § 87(2)(b) in Brooklyn to go to the store on the way to Manhattan. § 87(2)(b) is a black male who is 5'11" tall and 160lbs. He was with a friend, § 87(2)(b) but the friend left § 87(2)(b) at the deli to go back to § 87(2)(b)'s home because he had left his CD player there. § 87(2)(b) waited for him at the corner store called the 7 and 7 on East 54<sup>th</sup> Street and Flatlands Avenue. He had bought chips and cigarettes. There was a guy sitting on a crate and § 87(2)(b) gave him a head-nod. The guy on the crate was a black male with dark skin, low cut hair, young and looked "bummy" in blue jeans and a white shirt. § 87(2)(b) has seen him there before but does not keep conversation with him. As § 87(2)(b) lit up a cigarette, an officer in plainclothes came up to him and told him to, "Come to the side of the wall. Get your hands on the wall." This officer was identified as PO Vernon Kendrick and was a black male in plainclothes with a muscular build about 5'9"-10" who weighed more than § 87(2)(b) and his hair was in a low-cut cesar. § 87(2)(b) did not comply right away because he did not know that he was an officer. § 87(2)(b) was about to leave but the officer extended his asp which he had in his hand and told him to get on the floor. PO Kendrick was holding it by the handle at his shoulder, about three feet away from § 87(2)(b). There is a button in the asp that when it is pushed it extends. § 87(2)(b) did as he was told, moving up against the wall and onto his knees with his hands behind his back. Two mini-vans had pulled up on the scene but it was dark out so § 87(2)(b) could not tell what color they were. PO Kendrick put him into handcuffs and stood him up.

All of the officers searched him. PO Kendrick put his hands into § 87(2)(b)'s pockets and pulled the pockets out. They went into the back pockets and then patted him down. He had one hundred twenty four dollars in his pocket. A second officer, not identified through this investigation, also searched § 87(2)(b). That officer was a white male who was fat with short hair, in his 30's, and had a baseball cap. There was a sergeant, identified as Sgt. Brian Nyhus. Sgt. Nyhus was a white male who was taller than the other officers were and slim. Sgt. Nyhus asked him questions about marijuana, if he had ever smoked and if he had been arrested. § 87(2)(b) told Sgt. Nyhus that he had been arrested before for possession of marijuana. Sgt. Nyhus said, "You're no angel!" and took him into the van. § 87(2)(b) arrived back at the scene while § 87(2)(b) was being searched.

The officers searched the man who had been sitting on the crate at the same time that they were dealing with § 87(2)(b). They removed both of them from the scene and put § 87(2)(b) in one van and the other guy in a second van. There were three other people who were in the van, black males. § 87(2)(b) was able to describe two of them. They were black males, one was skinny and tall, 5'11" and had an accent and the second was short with a muscular build and braids 5'10"-11". The muscular man with braids in his hair lives across the street from § 87(2)(b) with his baby's mother but § 87(2)(b) had not talked to him before that night. He was arrested on § 87(2)(b) and charged with a crime related to marijuana. The officers looked in and around the store with flashlights. There were six officers in total, dressed in plainclothes and all white males except for PO Kendrick. They let the guy who was sitting on the crate go. § 87(2)(b) asked again why he was stopped but none of the officers answered him. The officer driving the van was identified as PO Singh (first name unknown) and was a white male with long black hair sticking out from under a cap and he had a light beard and moustache. The officer identified as PO Kevin Pecorella was in the passenger seat but § 87(2)(b). They drove away from the scene and went to South Shore High School parking lot until the officers got a call to return to the 63<sup>rd</sup> Precinct.

When he got to the 63<sup>rd</sup> Precinct the officers from the prisoner van brought him to a back area where there are chairs and tables to strip-search him. PO Singh and another officer that may have been PO Pecorella conducted strip-searches of the other two prisoners who had been in the van. During the strip-search § 87(2)(b) was asked to take off each item of clothes, flip them, shake them, and turn his socks inside out. They had him squat and told him to put his clothes back on. The officers brought him to the holding cell. § 87(2)(b) had never been strip-searched before. He has been arrested for § 87(2)(b) before but was not convicted.

§ 87(2)(b) asked why he was being arrested and they refused to answer. He was put into a cell. His mother came to the precinct to recover his items. The officers told her that he was being arrested for § 87(2)(b). They said the sergeant observed him make a sale. His mother insisted that they let § 87(2)(b) out of the cell to explain his story. They let him out and he told her what had happened. His mother asked to see the drugs he had on him. In the precinct on the table they had four yellow envelopes laid out with people's things in it. The officers reached into the first envelope and it contained a bag that had brown substance in it that looked like marijuana and then they pulled out a jar that had marijuana in it. They showed the bottle to his mother and told her that that was what he was selling. § 87(2)(b) explained what had happened and his story lined up with his friend, § 87(2)(b) who had come to the precinct. § 87(2)(b) did not know he had come to the stationhouse. § 87(2)(b) was brought to Central Booking at one or two o'clock in the morning but did not see a judge and was let out a side door at around three o'clock in the morning. He was told that the case had been dropped and did not receive any paperwork.

On August 17, 2006, he saw the same sergeant again at approximately 5:00PM on 53<sup>rd</sup> Street and Avenue J, next to a doctor's office. He was with another officer who was chubby and clean cut with a hat. He was there the night before and was identified through the investigation as PO Gaspar Sciacca. § 87(2)(b) was with his friend, § 87(2)(b) and they had just come back from a Jerk chicken restaurant on Utica and Avenue I. They walked to the 7 and 7, picked up something to drink and walked across the street. As they were walking and talking the two officers came up. The sergeant said, "Can you guys stand over here please?" He was pointing to a brick wall. The officers started to search § 87(2)(b) and § 87(2)(b). The sergeant was searching § 87(2)(b) and the PO Sciacca was searching § 87(2)(b). The officer put his hands into § 87(2)(b)'s pockets and patted his front and back. The officer did not take his identification. The sergeant pulled up § 87(2)(b) jeans and shook his jeans. He tapped and searched § 87(2)(b) pockets. § 87(2)(b) said, "We're going through this again?" He replied, "What do you mean not this again?" Then he looked at his face and said, "Oh, § 87(2)(b). He asked him how "the bookings" was. They told them to have a nice day and left after completing their searches.

### **Results of Investigation**

§ 87(2)(b) was interviewed at the CCRB on October 10, 2006 (encl. 6A-6D). On August 17, 2006, at East 54<sup>th</sup> Street and Flatlands Avenue, § 87(2)(b) and § 87(2)(b) had just gotten their hair cut and then had gotten food and stopped at a store to get a drink. After getting their drinks they walked towards their home. They had gone to a store at 54<sup>th</sup> Street and Flatlands and had plastic bags containing their food. § 87(2)(b) had bought a Gatorade. § 87(2)(b) had a soda. The drinks were in the bag with the food. About a block or two away from their home two males approached them from behind and yelled, "Stop, get against the wall, drop your stuff." § 87(2)(b) and § 87(2)(b) looked back and then complied. Both were white males in their late 30's; one officer, identified as PO Gaspar Sciacca was husky, about 6'2" tall and the other was short 5'9" tall, thin with short brown hair and identified as Sgt. Brian Nyhus. Sgt. Nyhus did most of the speaking. They dropped their bags. They did not see the officers' badges. The officers made them stop, take off their shoes, patted them down, opened up their wallets and counted their money. The officers shook the shoes to make sure there was nothing in them and patted down their socks. The officers took their things out of their pockets. § 87(2)(b) had his wallet, keys and phone in his pocket. Sgt. Nyhus was frisking and searching § 87(2)(b) and PO Sciacca was with § 87(2)(b). They asked them what was in their bags and where they were coming from and what they were doing. They told the officers that they were just getting food, that they had gone to get their hair cut and that they live in the area. § 87(2)(b) gave Sgt. Nyhus his college identification and Sgt. Nyhus asked, "You go to college? Why are you walking the streets?" § 87(2)(b) told him that he was home for the summer. The officer said, "Stay out of trouble and keep your head going straight." § 87(2)(b) did not see if they had a vehicle. § 87(2)(b) did not say much. § 87(2)(b) did most of the talking. § 87(2)(b) asked the officers why they were doing this to him again. The officers asked him what he was talking about. § 87(2)(b) said, "You did this to me yesterday and took me in." Sgt. Nyhus said, "Yeah, we did, we knew you looked familiar. Maybe this time we won't run you in." The officers told them to put their shoes back on, pick up their food, and let them go. The officers wrote down their names on a piece of paper. The officers did not get on the radio. § 87(2)(b) and § 87(2)(b) were stopped for ten minutes.

#### *Civilians Not Interviewed*

§ 87(2)(b) was not interviewed because it was apparent from § 87(2)(b)'s statement that he was not present for the incident. § 87(2)(g)

#### *Officer Identification*

Det. James Williams was identified from § 87(2)(b)'s arrest report as the arresting officer in this case. Det. Williams is 5'5" tall, weighs 185lbs and has brown hair. The roll call and TAC plan were ordered § 87(2)(g) (13A-14B). Sgt. Brian Nyhus is 6'3" tall, weighs 250 lbs. and has red hair. PO Sciacca, who according to the TAC plan worked with Sgt. Nyhus and Det. Williams on the date of this incident, is 6'1" tall, weighs 300lbs., and has brown short hair. According to the TAC plan from August 17, 2006, PO Sciacca worked with Sgt. Brian Nyhus when the second incident occurred with § 87(2)(b). PO Pecorella worked in the prisoner van and is 5'10" tall, weighs 225lbs. and is bald. PO Singh also worked in the prisoner van but his first name is unknown because he is not listed on the roll call and is no longer assigned to the same command or has left the service. Det. Ticali is a light skinned Native American male who is 6'2" tall, weighs 230lbs. and has brown hair. PO Kendrick is a black male who is 5'8" tall, weighs 190lbs.

**Sgt. Brian Nyhus** was interviewed at the CCRB on February 13, 2006 (encl. 11A-11E). On August 16, 2006, he worked from 1:25PM to 10:00PM. He was the supervisor in charge of the 63 and 69 Narcotics module and worked with Det. Williams in a dark colored SUV. They were working in a street narcotics enforcement capacity. He wrote in his memo book that they arrested four individuals in the vicinity of the 63<sup>rd</sup> and 69<sup>th</sup> Precincts.

East 54<sup>th</sup> Street and Flatlands Avenue is a narcotics prone location. Sgt. Nyhus and his team were set up there for the purpose of enforcement on Flatlands Avenue, across the street from where § 87(2)(b) was arrested. He was in his vehicle with Det. Williams. Sgt. Nyhus and Det. Williams were the only ones watching this particular location. They had a clear view of the entire corner. The street is well-lit and there is a corner store. The vehicle traffic is moderate and the pedestrian traffic is light that time of night. The other members of Sgt. Nyhus' team were spaced around the location, several blocks

away. Sgt. Nyhus did not know their exact location. They had been at the location for about an hour. At 9:30PM, Sgt. Nyhus was informed by Det. Williams that he saw an object exchange hands between two individuals. The individual receiving the object, stopped, held it up under a streetlight to examine it and walked off. Det. Williams informed Sgt. Nyhus that from his observation it looked to be an exchange of marijuana or crack. Sgt. Nyhus was watching other people at the location when Det. Williams made his observation.

Sgt. Nyhus radioed over the description via point to point of the person involved in the exchange to the field team. The field team arrested the buyer a block away from where they observed the sale. After the field team stopped that individual, the field team let them know that he was in possession of marijuana and he was placed under arrest. Sgt. Nyhus and Det. Williams moved in to arrest § 87(2)(b). Sgt. Nyhus got out of the vehicle with Det. Williams. They identified themselves as police officers and asked § 87(2)(b) to come over to them because they wanted to talk to him. Sgt. Nyhus had his shield around his neck and stated that he was a police officer. They knew that § 87(2)(b) was the same person that they had seen make the exchange because they had not lost sight of him. § 87(2)(b) was compliant and came over to the officers. Members of the field team arrived shortly after Sgt. Nyhus and Det. Williams. Det. Williams spoke to § 87(2)(b). Sgt. Nyhus could not remember what § 87(2)(b) said to Det. Williams. Sgt. Nyhus stated that Det. Williams did not take out his asp because there was no need to. § 87(2)(b) was placed against the wall for the purpose of a field search. Sgt. Nyhus did not know who from his field team conducted that field search. Det. Ticali and Det. Kendrick came to assist Sgt. Nyhus and Det. Williams. PO Pecorella and PO Singh made the other arrest. During the field search, marijuana was found on § 87(2)(b). Sgt. Nyhus did not know what kind of container the marijuana was in or in what form it was in. He stated that it would be documented in the arrest paperwork. All the prisoners were transported to the 63<sup>rd</sup> Precinct stationhouse for arrest processing. Sgt. Nyhus went to the stationhouse where they processed the arrest. Officers working in the p-van that evening would have strip-searched him. Sgt. Nyhus stated that the officers in the p-van indicated to him that he was moving around while he was placed in the p-van, in an attempt to discard or hide other contraband.

On August 17, 2006 Sgt. Nyhus worked from 3:25PM to 12:00AM. He was assigned to enforcement and did not have an entry as to when he went into the field. After referring to the TAC plan Sgt. Nyhus stated that PO Sciacca was his driver. They were set up at the location of East 54<sup>th</sup> Street and Flatlands Avenue. They saw two individuals come out of the deli on the corner and interact with several other individuals who were hanging out on the corner that Sgt. Nyhus was observing. Sgt. Nyhus saw § 87(2)(b) shake hands with several individuals. Sgt. Nyhus thought that they might be conducting a hand to hand transaction. He thought that it might be a hand to hand transaction because it was a narcotics prone location. Two people had come out of the store and there were two to three people on the corner. When asked if there was anything about the individuals' actions that led Sgt. Nyhus to believe that a drug transaction had taken place Sgt. Nyhus replied, "The two individuals walked past my car where I was parked and I recognized him from the day before as one of the individuals that we arrested for sale of marijuana. So, at that point I concluded that it was possible that another sale had just taken place. So, we stopped the two individuals." Sgt. Nyhus did not see anything pass between the two individuals hands. When § 87(2)(b) saw Sgt. Nyhus he said, "I'm not stupid enough to do it again." To Sgt. Nyhus, this was an indication of guilt from the previous day. After § 87(2)(b) shook hands with the individuals across the street, he did not return his hands to his pocket. His hands were cupped as if he was holding something. Sgt. Nyhus asked him to open his hands but he did not have anything in his hands. Sgt. Nyhus did not feel that it needed to go further with a frisk or a field search so he let the people go. Sgt. Nyhus did not frisk § 87(2)(b) or the person he was with nor did Sgt. Nyhus' partner. He did not go into their pockets at all. Because § 87(2)(b) had not returned his hands to his pocket and did not have money or drugs in his hand, Sgt. Nyhus could conclude that no transaction had taken place.

**PO Kevin Pecorella** was interviewed at the CCRB on November 28, 2006 (encl. 9A-9E). On August 16, 2006, PO Pecorella worked from 3:33PM to 12:00AM and was assigned to enforcement either as SNEU or Buy and Bust operations. He could not recall whom he was working with. PO Pecorella did not have any memo book entries. When he was shown the TAC plan he stated that he was indeed working in the prisoner van and had only a vague recollection of assisting in an arrest in that capacity. He could not recall

the stop and stated that the prisoner van is usually the last to arrive because they are stationed three or four blocks from the location. He was shown a black and white photocopy of § 87(2)(b)'s identification and denied recognizing him. PO Singh was his partner according to the TAC plan and is an Indian male with medium toned skin, not light but not dark. PO Pecorella could not recall conducting a strip-search. PO Pecorella stated after being shown the command log that he still could not remember conducting a strip-search. He stated that everyone from the field team went back to the stationhouse. PO Pecorella could not remember the circumstances of this arrest. He stated that along the guidelines they normally conduct a strip-search supervised by his sergeant. He did not know the outcome of the arrest. Marijuana is sold on the corner where the arrest was made. They had undercover officers working that day according to the TAC plan and PO Pecorella stated that this indicates that undercover officers were either observing or conducting "plain undercover operations." On August 17, 2006 PO Pecorella worked from 3:33PM to 12AM. He could not remember who he worked with but stated that he was plainclothed and working in enforcement. He could not recall stopping § 87(2)(b) on that date. He could not remember being at 53<sup>rd</sup> and Avenue J. He did not work with Sgt. Nyhus on August 17, 2006.

**PO Gaspar Sciacca** was interviewed at the CCRB on December 1, 2006 (encl. 8A-8F). On August 16, 2006 he worked from 3:33PM to 12:00AM. He was assigned to Buy and Bust and was in a car with Sgt. Nyhus and the arresting officer. He could not remember what car they were driving. PO Sciacca did not have any memo book entries from that night. On the date of incident, it was PO Sciacca's first day of enforcement with the narcotics command. PO Sciacca stated that he could recall that an arrest and was shown a photocopy of § 87(2)(b)'s license and stated that he did recognize him. When asked if he knew what precipitated § 87(2)(b)'s arrest, PO Sciacca stated that he was not sure but he could remember that the field team called the sergeant to the scene. PO Sciacca knew that it was a narcotics related arrest. They were within five blocks of the arrest, which took place on the corner of Flatlands Avenue and 54<sup>th</sup> Street. PO Sciacca stated that over the radio they received information regarding the location where they needed to go. He could not recall if they received a description of the suspect. He stated that it took them less than a minute to get to the location. When they got there, § 87(2)(b) was handcuffed and the rest of the team was there. They conducted a search incident to arrest. PO Sciacca did not know if the search yielded any results or who was responsible for the search. Another individual was detained but PO Sciacca did not know if he was detained in relationship to § 87(2)(b)'s arrest. § 87(2)(b) was escorted to the prisoner van and brought to the 63<sup>rd</sup> Precinct. PO Sciacca could not remember if any drugs were found at the location. PO Sciacca was not allowed to do anything on the date of the incident because it was his first day. He did not know if a strip-search was conducted and did not witness a strip-search. PO Sciacca had a clean-shaven face and short hair during this interview but stated that he sometimes has facial hair. PO Sciacca could not remember how the identification of the prisoner was confirmed at the scene, by show up or just by the description given. He could not remember if any drugs or paraphernalia was confiscated from § 87(2)(b). PO Sciacca stated that he did not recall seeing § 87(2)(b) on another date.

On August 17, 2006 PO Sciacca worked from 3:33PM to 12:00AM and was assigned to Buy and Bust. At 5:00PM he indicated that he was at the Brooklyn South base having a tactical meeting. He did not generate any paperwork on the date of this incident according to his memo book. PO Sciacca only remembers one incident with § 87(2)(b). He did not recognize a photo of § 87(2)(b). He stated that he could not remember making any stops on that date but that they do make stops when working Buy and Bust. He was dressed in plainclothes. PO Sciacca could not remember if anyone else was working with them. He did not fill out any stop and frisk reports on August 17, 2006 and was not instructed to do so by Sgt. Nyhus.

**Det. Daniel Ticali** was interviewed at the CCRB on December 15, 2006 (encl. 7A-7F). On August 16, 2006 he worked from 3:27PM to 12:00AM. He was assigned to the chase car, a grey Mitsubishi endeavor. They were conducting SNEU observations, standard enforcement. He was dressed in plainclothes. He did not have any memo book entries regarding § 87(2)(b)'s arrest or for the time of this incident.

The location of the arrest is on the Narcotics plan for the 63<sup>rd</sup> Precinct. For several months it has been a hot location. They had observed some suspicious activity and therefore decided to set up there. Det. Ticali was west of the location, about a quarter of a block. They walked to the place where they started their

observation. The arresting officer, Det. Williams, and his team were east of the location and there were other field teams in the field around the surrounding area. He and PO Kendrick were out of their vehicle observing a store called the seven and seven for forty five minutes to an hour, on the corner of 54<sup>th</sup> Street and Flatlands Avenue next to Avenue J. There had been several narcotics kites at that location. § 87(2)(b) was wearing a black jacket, a knit cap and dark blue jeans and sneakers. He was walking around the perimeter of the store and interacting with a lot of people, saying hi to some people. Det. Ticali and PO Kendrick heard him say on more than one occasion "I have trees," in street slang this means marijuana. The other members of the field team were on the other side. At one point § 87(2)(b) had an interaction with another person. He had his back turned to Det. Ticali so that he could not see what was happening. Det. Ticali got news over the radio that the Det. Williams felt that there was a positive buy and told them to keep their eyes on § 87(2)(b) while someone checked the possessor. A few minutes later Det. Ticali was told that the results of that stop were positive, they did find marijuana. They were told to keep their eyes on § 87(2)(b) so that the Det. Williams could come and affect his arrest.

When the arresting officer came from around the corner, Det. Ticali and PO Kendrick crossed the street and they approached § 87(2)(b). There was no incident. No force was used. Det. Ticali could not remember anyone taking out their asp or night stick. § 87(2)(b) asked what he was being arrested for and he stated that he was being arrested for selling marijuana. § 87(2)(b) stated that he had not taken any money, that he did not sell the marijuana and that he was just helping out a friend. Det. Ticali searched § 87(2)(b) but did not know if he recovered anything from him. § 87(2)(b) also told them that he had family in the police department and asked to make contact with them. They told him that he could. They put him in the prisoner van, which already had the other gentleman, a black male with lighter skin, a baseball cap and blue jeans in there. The individual who had received the drugs in the transaction was apprehended before § 87(2)(b) one block east of the location where § 87(2)(b) was arrested. Det. Ticali made another arrest on the way back to the stationhouse and therefore did not get back to the stationhouse for a half an hour.

Det. Ticali did not strip-search § 87(2)(b) and did not know for sure if he was strip-searched. He was not present for a strip-search and could not remember if anyone told him that § 87(2)(b) was strip-searched. Det. Ticali had never seen § 87(2)(b) before but other officers at the precinct had. Det. Ticali explained that even though there were undercovers on the TAC plan, sometimes the undercovers get pulled from the team. Det. Ticali had a goatee and close shaved hair at the time of this incident.

On August 17, 2006, Det. Ticali was doing trial prep. According to his memo book he had to go to the property clerk at the 84<sup>th</sup> Precinct, to the lab in Queens at 150<sup>th</sup> Street and Jamaica, get the paperwork in regards to the trial, pick up vouchers and bring it to Manhattan to the ADA. He ended his tour at 1800 and was at the base at 1415. He did not work in the field or conduct any stops. He worked alone. He did not interact with § 87(2)(b) on that date.

**PO Vernon Kendrick** was interviewed at the CCRB on December 15, 2006 (encl. 10A-10E). He was assigned to the chase car and dressed in plainclothes. This was PO Kendrick's first day working at this command. He was given the Tactical plan to look at. His tour was 3:27PM to 12:00AM and he worked with Det. Ticali. PO Kendrick stated that he had an independent recollection of the arrest. He did not bring in the correct memo book.

PO Kendrick stated that he and Det. Ticali had parked their car up the street from a deli. There was one team that was watching the corner. The area where this arrest was made is a known marijuana spot. PO Kendrick and Det. Ticali were in the bushes across the street in order to get close enough so that when any drug activity happened, they could make the arrest. Det. Ticali was behind him and did not have a clear view of the location. PO Kendrick received a sign over the radio to move in. PO Kendrick could not remember who gave the instruction over the radio to move in. PO Kendrick moved in with his shield out, crossing the street. He told § 87(2)(b) "Police don't move." § 87(2)(b) turned to walk away. PO Kendrick had his asp in one hand but it was not extended, he extended it and said, "Get on the wall." PO Kendrick put his asp away. He did not touch or hit § 87(2)(b) with his asp. § 87(2)(b)

§ 87(2)(b) complied. PO Kendrick did not observe a drug transaction. When they moved in, there was only one other man on the street who was sitting on a milk crate. PO Kendrick did not see § 87(2)(b) before they approached him in front of the store. PO Kendrick handcuffed him. He could not remember searching him and could not remember if any contraband was found. He could not remember if there was a show-up in order to confirm § 87(2)(b)'s identity as a perpetrator or how his identity was confirmed. There was one other person who was arrested there. Other officers arrived quickly after PO Kendrick and Det. Ticali. Det. Williams and the officers from the prisoner van came.

PO Kendrick went back to the stationhouse at some point but could not remember the exact time. § 87(2)(b)'s mother showed up at the stationhouse. PO Kendrick did not strip-search § 87(2)(b) and was not aware that he was strip searched until the CCRB allegations came up. He did not know who strip-searched him or who authorized the strip-search except that it was a supervisor working with them that day. PO Kendrick had never seen § 87(2)(b) Nared before this incident. PO Kendrick could not remember from the command log which individual was arrested with § 87(2)(b). § 87(2)(b)'s mother came to the stationhouse; § 87(2)(b).

On August 17, 2006, PO Kendrick worked 3:33PM to 12:00AM. He was assigned to the prisoner van. He did not observe Sgt. Nyhus interacting with § 87(2)(b).

**Det. James Williams** was interviewed at the CCRB on February 27, 2007 (encl. 12A-12E). At 9:20PM he wrote that he had a 10-92C for § 87(2)(b) at Avenue J and 57<sup>th</sup> Street, defendant § 87(2)(b). At 9:30PM he wrote 10-92C penal law § 87(2)(b) Flatlands and East 54<sup>th</sup> Street, defendant § 87(2)(b).

On August 16, 2006 at approximately 9:30PM Det. Williams and his partners were observing an area which they had had a complaint about for Narcotics sales. Det. Williams stated that the complaint their command had gotten was received by a different detective, he did not know who that detective was. It was an active complaint, a kite. About ten minutes prior to § 87(2)(b)'s arrest, Det. Williams saw him engage in a hand to hand transaction with § 87(2)(b). § 87(2)(b) was giving § 87(2)(b) marijuana. They stopped the guy who they had seen buy the marijuana. He was in possession of the marijuana so they went back to East 54<sup>th</sup> street and Flatlands and arrested § 87(2)(b) for having given him the marijuana.

Det. Williams, Sgt. Nyhus, and PO Sciacca were set up on East 52<sup>nd</sup> to 53<sup>rd</sup> on the south side of Flatlands Avenue, watching from inside their car. Det. Williams was using binoculars. Det. Williams was in the driver's seat, closer to the road than the sidewalk. He had a clear view of the place where the transaction took place. The area was not heavy with pedestrian traffic. They had been at that location for about twenty minutes before Det. Williams saw the transaction. The area is lit by street lights and lights from a store window. § 87(2)(b) approached § 87(2)(b) and they became engaged in a conversation. § 87(2)(b) went into the bodega and § 87(2)(b) followed him. They did a high five. After doing the high five § 87(2)(b) looked at his hand down by his side, looked around and put it in his pocket. Det. Williams did not see the item and did not get an idea of its shape at the time but saw a glint of it as if it was made of glass. After Det. Williams saw this, he radioed via point to point radio to members of his team. Det. Williams went to J and East 57<sup>th</sup> Street and found § 87(2)(b) to be in possession of marijuana, a glass jar of marijuana. Sgt. Nyhus and PO Sciacca accompanied him. He radioed to the field team to look for § 87(2)(b). When they went back to the store he was still out in front. Det. Williams handcuffed him and placed him under arrest. He was the first to approach § 87(2)(b). Det. Williams did not draw his asp and could not remember any other officer do so. Det. Williams stated that § 87(2)(b) was compliant. . He was searched at the scene.

After this arrest Det. Williams made another arrest about thirty-five minutes later. He may have talked to § 87(2)(b) at the stationhouse but was not there for a strip search and stated that if he was it would have been authorized by the desk or a sergeant. Det. Williams had never seen § 87(2)(b) before and has not seen him since. The DA declined to prosecute § 87(2)(g). Det. Williams had a beard and moustache during his interview but stated that he changes his appearance often.



On August 17, 2007 Det. Williams worked from 4:00AM to 12:37PM doing arrest processing. He did not go into the field. He went to the DA's office but that was the only time he left.

### **Police Documents**

#### **Command Log**

The command log entry that was generated in relation to § 87(2)(b)'s arrest on August 16, 2006, indicated that § 87(2)(b) was being charged with § 87(2)(a) 160.50 was arrested at 9:30PM, was strip searched and that the strip-search was supervised by Sgt. Nyhus (encl. 17A-17D). There is also an entry for § 87(2)(b) which indicates that at 9:20PM he was arrested at 1037 East 57<sup>th</sup> Street and was charged with § 87(2)(b).

#### **Arrest Report**

The arrest report found on the booking and arraignment disposition system indicated that § 87(2)(b) was arrested for § 87(2)(a) 160.50 (encl. 18-19). The narrative states, § 87(2)(a) 160.50

#### **Stop Question and Frisk Log**

According to the Stop, Question and Frisk Log regarding stops made within the confines of the 63<sup>rd</sup> Precinct, there were no UF 250's generated for either § 87(2)(b) or § 87(2)(b) on August 17, 2006 (encl. 20).

#### **Other Police Documents**

§ 87(2)(b) [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

#### **Complainant Criminal Conviction History**

§ 87(2)(b) [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

#### **Civilian CCRB History**

§ 87(2)(b) has not made any prior complaints at the CCRB.

#### **Officer CCRB History**

Sgt. Brian Nyhus has not had a substantiated complaint at the CCRB.

### **Conclusions and Recommendations**

#### **Undisputed and Disputed Facts**

On August 16, 2006, Det. Williams claimed that he observed an alleged drug transaction take place between § 87(2)(b) and § 87(2)(b) § 87(2)(g). Both PO Kendrick and § 87(2)(b) agree that PO Kendrick stopped § 87(2)(b) on East 54<sup>th</sup> Street and Flatlands Avenue. It is undisputed that § 87(2)(b) started to walk away and that PO Kendrick drew and extended his asp, telling § 87(2)(b) to get against the wall. It is undisputed that § 87(2)(b) was brought to the 63<sup>rd</sup> Precinct in the prisoner van and strip-searched at the stationhouse under the supervision of Sgt. Brian Nyhus.

It is undisputed that on the following day, August 17, 2006, while Sgt. Brian Nyhus was working with PO Sciacca, he stopped § 87(2)(b) and his friend § 87(2)(b) § 87(2)(g).

#### **Credibility**

§ 87(2)(g) [REDACTED]

§ 87(2)(g) [REDACTED]

[REDACTED] provided the additional details that Sgt. Nyhus took his college identification and that he and [REDACTED] took off their shoes during the time that they were searched. § 87(2)(g) [REDACTED]

§ 87(2)(g) [REDACTED]

Sgt. Nyhus stated that he and Det. Williams were the first to approach § 87(2)(b) [REDACTED] § 87(2)(g) [REDACTED] PO Kendrick and § 87(2)(b) [REDACTED] that PO Kendrick was the first to approach. Sgt. Nyhus also stated that during the field search, marijuana was found on § 87(2)(b) [REDACTED] § 87(2)(g) [REDACTED]

§ 87(2)(g) [REDACTED]

[REDACTED] § 87(2)(b) [REDACTED] and § 87(2)(b) [REDACTED] stated that they were carrying bags of food and drink. Furthermore, Sgt. Nyhus denied having any conversation or interaction with § 87(2)(b) [REDACTED] § 87(2)(g) [REDACTED]

§ 87(2)(g) [REDACTED]

§ 87(2)(g)

*Allegations not Pleaded*

When he made his first complaint § 87(2)(b) stated that PO Kendrick pushed him against the wall however, he did not reiterate this allegation during his official interview and therefore the allegation was not pleaded. § 87(2)(g)

**Allegation A: Sgt. Brian Nyhus supervised the strip-search of § 87(2)(b)**

§ 87(2)(g)

For example, he stated that the officers in the p-van told him that § 87(2)(b) was moving around as if he were attempting to conceal something and the officers denied this. § 87(2)(g)

According to patrol guide procedure 208-05, “A strip-search will be utilized when the arresting officer reasonably suspects that weapons, contraband or evidence may be concealed upon the person or in the clothing in such a manner that they may not be discovered by the previous search methods” (encl. 1A-B). § 87(2)(g)

**Allegation B: Sgt. Brian Nyhus forcibly stopped § 87(2)(b) and § 87(2)(b) on August 17, 2006.**

Sgt. Nyhus stated that his reasons for stopping § 87(2)(b) were based on the reputation of the location as a drug-prone location, his observation of § 87(2)(b) shaking hands with individuals on the street, and his realization when § 87(2)(b) walked by their car, that he had arrested him the day before. Sgt. Nyhus stated that he did not see anything pass between the individuals hands when they shook hands. § 87(2)(g)

Sgt. Nyhus posited the argument that he merely asked to see § 87(2)(b)'s hands which he claimed were cupped. § 87(2)(g)

§ 87(2)(g)

According to PD344-153 regarding street encounters, a level three stop requires, “A reasonable suspicion that a person is committing, has committed or is about to commit a felony or Penal Law misdemeanor. Reasonable suspicion exists when the information known to the MOS is of such weight and persuasiveness as to make the MOS, depending on his or her judgment and experience reasonably suspect criminality” (encl. 1C). § 87(2)(g)

**Allegation C: Sgt. Brian Nyhus supervised the frisks of § 87(2)(b) and § 87(2)(b) on August 17, 2006**

**Allegation D: Sgt. Brian Nyhus supervised the searches of § 87(2)(b) and § 87(2)(b) on August 17, 2006.**

§ 87(2)(g) [REDACTED]  
[REDACTED] Sgt. Nyhus denied that they were frisked and searched and therefore did not articulate any reason for frisking or searching § 87(2)(b) and § 87(2)(b). According to criminal procedure law 140.50(3) an officer can frisk a subject for a weapon or instrument capable of causing injury when the officer suspects he/she is in danger of physical injury (encl. 1C). § 87(2)(g) [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

§ 87(4-b) § 87(2)(g) [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

Investigator:

Date:

Supervisor:

Date:

Reviewed by:

Date:

Reviewed by:

Date: